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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,865	08/27/2001	Reuben Hertz		3746

31877 7590 08/12/2003

ALLEN D. HERTZ  
12784 TULIPWOOD CIRCLE  
BOCA RATON, FL 33428

EXAMINER

ROSE, ROBERT A

ART UNIT	PAPER NUMBER
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3723

11

DATE MAILED: 08/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/939,865

Applicant(s)  
Hertz

Examiner  
Robert Rose

Art Unit  
3723



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Jun 30, 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 4-12, 14-25, 27-31, and 33-42 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-12, 14-25, 27-31, and 33-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

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### DETAILED ACTION

1. Claims 3, 13, 26, and 32 have been canceled.
2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2, 4-5, 9-12, 14-15, 19, 29-31, 33-34, and 38 are rejected under 35

U.S.C. 102(b) as being clearly anticipated by Stark, et al. Stark, et al disclose an apparatus for propelling a stream of particulate matter comprising all of the subject matter set forth in the claims above. A compressed gas source is delivered to a mixing chamber through a gas receiving port, and mixes with abrasive within the chamber, followed by discharge through a discharge conduit to strike a target material. The limitation of the particle-directing tube being "bendable" is a functional limitation which is deemed sufficiently broad to read on the discharge tube of Stark, et al. While not shown as having a bend, the material in Stark is certainly capable of being bent. The device of Stark et al is of a size and shape to allow the nozzle to be hand-held.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 6-8, 16-18, and 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stark, et al in view of Dougherty. Dougherty discloses the known use of color coding of containers to identify the contents therein, and further disclose the known use of an end cap(70) for sealing the discharge end of a chamber to prevent the contents from being discharged. The use of color coding to help identify the contents of the chamber would have been obvious in view of Dougherty. Such color coding is used throughout industry for discriminating between similar looking containers, and for identifying their contents. To further provide an end cap at the distal end of the discharge conduit to prevent inadvertant discharge of the media from the chamber when not in use, would have been obvious in view of Dougherty.

6. Claims 20-21, and 27-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stark et al in view of Schur et al. In-as-much as Applicant is only entitled to the filing date of the CIP application for the new subject matter directed to the self-sealing mechanism recited in claim 20, the Schur et al reference is deemed to constitute prior art against this set of claims. Schur et al disclose a self-sealing one-way valve located within the chamber upstream of the gas receiving port. To provide such a one-way valve in the chamber of Stark et al upstream of the gas receiving port, to prevent backflow of media would have been obvious in view of Schur et al.

7. Claims 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stark et al in view of Schur et al and further in view of Daubenberger et al. Schur et al teaches to provide a check-valve in a location between the gas receiving port and the mixing chamber to prevent backflow of the abrasive media. Daubenberger et al disclose a check-valve for one-way flow of

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media through a passageway comprising a hemispherical-shaped flexible material having a slit which closes to prevent backflow of media through the valve. To provide such a conventional hemispherical-shaped check-valve in the location taught by Schur et al to prevent backflow of media while minimizing the number of moving parts prone to wear, would have been obvious in view of Daubenberger et al.

8. Applicant's arguments filed June 30, 2003 have been fully considered but they are not persuasive. With regard to applicant's new limitations of the device being "designed to be hand-held", it is clear from the drawings in Stark et al that the device is of a size and shape which would permit hand-held use. Note the relative size of the chamber in figure 1 as compared to a typical molar, also shown in figure 1. Further, with regard to the limitation of the gas delivery conduit and the discharge conduit overlapping, such configuration is shown at least in figure 1 of Stark et al. With regard to independent claim 20 Schur disclose the location and structure of a check valve claimed in claim 20. The Schur patent predates the filing date of Applicant's CIP subject matter by more than one year, thus applicant's affidavit is not deemed sufficient to overcome the art of record. With regard to applicant's affidavit of commercial success, The affidavit has been considered but not found convincing. There are a multitude of possible reasons for commercial success which may be unrelated to obviousness, such as advertising and marketing of a product, and it is not clear that commercial success in this instance is directly attributable to non-obviousness.

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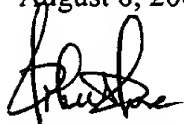
9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

10. Any inquiry concerning this communication should be directed to Robert Rose at telephone number (703) 308-1360.

rr

August 8, 2003.



**ROBERT A. ROSE**  
**PRIMARY EXAMINER**  
**ART UNIT 323**